Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-792

ELLIS TRUCKING COMPANY, INC.,
an Indiana Corporation, and
NAVAJO-ELLIS TRUCKING CO., INC.,
a New Mexico Corporation,
Petitioners,
v.
EARL L. SMART
and
LOCAL UNION NO. 299,
Affiliated with International Brotherhood of Teamsters,
Chauffeurs, Warehousemen and Helpers of America,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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STATEMENT OF ISSUES

I.

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II.

THE COURT OF APPEALS WAS CORRECT IN HOLDING THAT THE STATUTE OF LIMITATIONS WAS TOLLED WHILE THE RESPONDENT MOVED FOR RE-HEARING OF THE DECISION OF THE ARBITRATION PANEL.

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THE COURT OF APPEALS CORRECTLY HELD THAT RESPONDENT'S AMENDED COMPLAINT STATED A CLAIM FOR BREACH OF THE DUTY OF FAIR REPRESENTATION WHICH WOULD ALLOW THE RESPONDENT-EMPLOYEE TO PROCEED AGAINST THE PETITIONERS ON HIS CLAIM FOR BREACH OF THE COLLECTIVE BARGAINING AGREEMENT.

STATEMENT OF FACTS

Respondent, Earl L. Smart was employed as a truck driver by Ellis Trucking Company, Inc., and Navajo-Ellis Trucking Company, Inc. (referred to herein as Petitioners) under a written contract of employment, between Petitioners and Local Union 299 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (referred to herein as Union). Said Union was the exclusive bargaining representative of the employees of the Petitioner.

On September 11, 1969, Respondent, in performing the duties assigned to him by Petitioner, was sent to a certain Kroger Supermarket and was ordered by a Kroger employee to perform work which Respondent believed was dangerous and contrary to safety standards. The Kroger employee told Respondent that he was fired and called Petitioner and told Petitioner "never to send Respondent back again." Respondent was subsequently notified that he was fired by a discharge dated September 15, 1969 without benefit of a written warning notice.

Immediately upon his discharge, Respondent requested Defendant Union file a grievance on his behalf, for the reason that he had been wrongfully discharged without cause contrary to the Collective Bargaining Agreement. Respondent had obtained affidavits of co-workers in support of his position that the work which he was told to perform by the Kroger employee was dangerous and that similar work had previously injured one truck driver. Respondent's grievance was referred to the Joint State Cartage

Committee, which upheld the discharge on September 16, 1969 and again on January 20, 1971 after Respondent had requested and been granted a rehearing.

On October 16, 1973 Respondent filed a complaint against Petitioner in the Eastern District of Michigan, alleging that his discharge was violative of the Collective Bargaining Agreement. Respondent filed an amended complaint on June 17, 1974 adding a second count against the UNION alleging breach of duty of fair representation and a third count stating that Petitioner and Union had conspired to have Respondent discharged.

Petitioners and Union thereafter filed Motions to Dismiss Respondent's Amended Complaint and on February 13, 1976, the Honorable Lawrence Gubow issued a Memorandum Opinion and Order granting dismissal of the complaint and amended complaint.

Respondent claimed an appeal to the United States Court of Appeals for the Sixth Circuit which, pursuant to its July 25, 1978 decision, reversed the dismissal of count one of the amended complaint which alleged wrongful discharge by Petitioner and affirmed the dismissal of counts two and three. The Sixth Circuit's written opinion made the following findings:

a. That the finality of an arbitrater's decision, pursuant to the Collective Bargaining Agreement between Petitioner and the Union, is not binding where it is alleged that the Union has breached his duty of fair representation.

b. That Respondent stated a colorable section 301 claim for wrongful discharge pursuant to *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554 (1976).

c. That the action is not in the nature of a Motion to Vacate or Modify an arbitration award, but is an independent cause of action.

d. That the appropriate Statute Of Limitations to be applied in the wrongful discharge claim against Petitioner is Michigan's three-year limitation period.

e. That Respondent's claim against Petitioner is not time barred by the Michigan three year Statute of Limitations because the Statute was tolled by a filing of Respondent's grievance and continuing grievance proceedings.

ARGUMENT

I.

THE COURT OF APPEALS CORRECTLY HELD THAT COUNT I OF RESPONDENT EMPLOYEES AMENDED COMPLAINT WAS NOT BARRED BY THE APPLICABLE STATE OF MICHIGAN THREE YEAR LIMITATION PERIOD.

This Court in *International Union v. Hoosier Cardinal Corporation*, 383 U.S. 696, 16 L Ed 2d 192, 86 S Ct 1107 (answered the question of timeliness of a suit brought under Section 301 of the Labor Management Relations Act, 1947).

> "It is true that if state limitations provisions govern Section 301 suits, these suits will lack a uniform standard of timeliness. It is also true that subject matter of Section 301 is "peculiarly one that called for uniform law." *Teamsters Local v. Lucas Power Company*, 369 U.S. 95, 102, 7 L Ed 2d 593, 598, 82 S Ct 571. Our cases have defined

the need for uniformity, however, in terms that are largely inapplicable here. . . that Congress did not provide for uniform limitation provision for Section 301 suits is not an argument for judicially creating one, unless we ignore the context of this legislative omission. It is clear that Congress gave attention to limitation problems in the Labor Management Relations Act, 1947; and enacted the six month provision to govern unfair labor practice proceedings, 61 Stat. 146, 29 USC §160(b) (1964 Ed), and it did so only after appreciable controversy. In this context, and against the background of the relationship between Congress and the courts in the question of limitation provisions, it cannot be fairly inferred that when Congress left Section 301 without a uniform time limitation, it did so in the expectation that the courts would invent one. As early as 1830, this court held that the state statutes of limitation govern the timeliness of federal causes of action unless Congress has specifically provided otherwise. *McCluny v. Silliman*, 3 PET 270, 277, 7 L Ed 676, 678. In 1895, the question was re-examined in another context, but the conclusion remained firm. *Campbell v. Haverhill*, 155 US 610, 39 L Ed 280, 75 S Ct 217. Since that time, state statutes have repeatedly supplied periods of limitations for federal causes of action when federal legislation has been silent on the question. *McClaine v. Rankin*, 197 US 154, 49 L Ed 702, 25 S Ct. 410; *Cope v. Anderson*, 331 US 461, 91 L Ed 1602, 67 S Ct. 1340; *Chattenoga Foundry v. Atlanta*, 203 US 390, 51 L Ed 241, 27 S Ct 65; *O'Sullivan v. Felix*,

233 US 318, 58 L Ed 980, 34 S Ct 596; *Englander Motors Inc. v. Ford Motor Company*, 293 F 2d 802 . . . The Court continues in *International Union, supra*, 'Accordingly, since no federal provision governs, we hold that the timeliness of a Section 301 suit, such as the present one, is to be determined as a matter of federal law, by reference to the appropriate state statute of limitations."

The Court of Appeals in deciding the applicable limitations period, relied on *Glowacki v. Motor Wheel Corporation*, 67 Mich App 448, 241 NW2d 240 (1976).

The Michigan Court of Appeals in *Glowacki* summarizes at page 462 and 463 of said opinion as follows:

> "We agree with Plaintiff that there are two separate claims which comprise Plaintiff's Complaint. We further agree with Plaintiff that in suits for breach of the duty of fair representation the governing period of limitations is the state statute which most directly applies (*International UUAA and AIW v. Hoosier Cardinal Corporation*, 383 US 696, *supra*, and that the two claims are so intimately related so as to require the same period of limitation to apply to both. Strong reasons of public policy exist for applying the same period of limitations to both actions. We disagree that the applicable state statute is six years. The recent decision of this court in *Stringer* v. *Sparrow Hospital*, 62 Mich App 696, 213 NW2d 698 (1975), clearly points to the application of the three year statute. So too, do the federal decisions from this

district in *Marshall v. Chrysler Corporation*, 378 F Supp 94 (ED Mich 1974) and *Krum v. Shepard*, 255 F Supp 994 (WD Mich, 1966). Each would hold that in the present situation the three year period prescribed by MCLA 600.5805 (7) would apply."

The decision of the Sixth Circuit Court of Appeals clearly followed the mandate of *International Union, supra*, that in a Section 301 suit, the federal court looks to state law in determining the applicable period of limitations.

II.

THE COURT OF APPEALS WAS CORRECT IN HOLDING THAT THE STATUTE OF LIMITATIONS WAS TOLLED WHILE THE RESPONDENT MOVED FOR RE-HEARINGS OF THE DECISION OF THE ARBITRATION PANEL.

The first paragraph of the Sixth Circuit Court of Appeals' opinion states the time sequence which is necessary in determining the question of tolling of the statute of limitations. (1) Respondent was discharged by petitioner on September 15, 1969, (2) The Joint State Cartage Committee upheld Respondent's discharge on Septe. .ber 16, 1969, (3) On October 21, 1969, Respondent requested a re-hearing which was denied. (4) On December 19, 1969, Respondent requested a re-hearing which was allowed. (5) On January 20, 1971, a re-hearing was held which upheld Respondent's discharge. (6) The third re-hearing was requested by Respondent on April 13, 1971, which was denied. (7) On October 16, 1973, Respondent filed a Complaint against Petitioner.

Clearly the fact that a re-hearing was granted on December 19, 1969 and held on January 20, 1971, is sufficient to support the Sixth Circuit's holding that the statute of limitations was tolled while the Respondent was actively pursuing his reinstatement. Clearly the fact that a re-hearing was allowed on December 19, 1969, but was not held until January 20, 1971, factually supports Respondent's Complaint for wrongful discharge and breach of duty of fair representation. To require Respondent to exhaust his contractual remedies, while at the same time allowing the statute of limitations to run, would be contrary to the Federal Labor Law policy favoring the settlement and resolution of these disputes by arbitration.

It is clear that Petitioners, in their brief, have not cited any decisions of other Courts of Appeal with regard to a Section 301 action. Their attempts to characterize the decision as being in conflict with other Circuit Courts of Appeals, clearly fail when the factual situation in the cases cited are closely examined.

III.

THE COURT OF APPEALS CORRECTLY HELD THAT RESPONDENT'S AMENDED COMPLAINT STATED A CLAIM FOR BREACH OF THE DUTY OF FAIR REPRESENTATION WHICH WOULD ALLOW THE RESPONDENT-EMPLOYEE TO PROCEED AGAINST THE PETITIONERS ON HIS CLAIM FOR BREACH OF THE COLLECTIVE BARGAINING AGREEMENT.

The Court of Appeals held that Respondent's Amended Complaint stated a colorable Section 301 claim for wrongful discharge under the standard annunciated in *Hines v. Anchor Motor Freight, Inc.*, 424 US 554, 47 L Ed 2d 231, 96 S Ct 1048 (1976).

Respondent alleged that his discharge was violative of the collective bargaining agreement and that the union's breach of duty denied him a fair grievance proceeding. This was sufficient to withstand dismissal for failure to state a claim upon which relief could be granted. Cf. *Desrosiers v. American Cyanamid Co.*, 377 F 2d 864, 870-71 (Second Circuit, 1967). In determining the sufficiency of a complaint on a motion to dismiss under Federal Rule of Civil Procedure 12(b) (6), the complaint must be liberally construed in favor of the party opposing the motion. See *Conley v. Gibson*, 355 US 41 (1957); *Davis H. Elliot Co. v. Carribean Utilities Co.*, 513 F 2d 1176 (Sixth Circuit, 1975).

The case of *Frank Santos v. District Council of New York City*, 547 F 2d 197 (U.S. Court of Appeals Second Circuit, 1977), discusses in detail the question of the sufficiency of a Section 301 complaint against a motion for summary judgment. At page 202, the Court states:

> "We believe that the instant case presents a situation in which allegations of a union's breach of duty are sufficiently serious to enable a court action filed in the face of a nonjudicial settlement requirement, to survive a motion for summary judgment. Appellant's complaint, while it does not in terms allege a breach of a duty, does allege facts from which it can readily be inferred that the Painters District Council, the AFL-CIO, and to a lesser extent, the Painters Brotherhood failed to exercise 'complete good faith and honesty of purpose in the exercise of

> their discretion.' *Ford Motor Company v. Huffman*, 345 US 330, 338, 73 S Ct 681, 686, 97 L Ed 1048 (1953), quoted in *Hines v. Anchor Motor*. . . . According to Appellant's uncontradicted allegations, the Painters have at best acted half-heartedly on Appellant's behalf, and the response of the AFL-CIO has been equally deficient in terms of adherence to the letter and spirit of Article XX.

In *Hines, supra*, the Supreme Court at 567-71, 96 S Ct 1048, stated:

> "We cannot believe the Congress intended to foreclose the employee from his Section 301 remedy otherwise available against the employer if the contractual process has been seriously flawed by the union's breach of its duty. . .' The court in *Hines, supra*, also noted that the employer, by discharging the employee, 'played its part in precipitating this dispute.' See also *Vaca v. Sipes*, 386 US 171, 185, 87 S Ct 903, 17 L 2d Ed 842 (1967). The employer has committed a wrongful discharge and breach of the agreement, a breach which could be remedied through the grievance process. . . were it not for the union's breach of its statutory duty of fair representation. . . .' "

A review of Respondent's Amended Complaint, in light of the above-cited authority, clearly supports the holding of the Sixth Circuit in denying Petitioner's Motion for a Summary Judgment.

CONCLUSION

Respondent respectfully submits for the foregoing reasons, that this Honorable Court should deny the Petition for Writ of Certiorari to the Sixth Circuit Court of Appeals.

Respectfully submitted,

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